

U.S. Department of Labor

Board of Alien Labor Certification Appeals
1111 20th Street, N.W.
Washington, D.C. 20036



DATE: APRIL 25, 1989
CASE NO. 88-INA-37

IN THE MATTER OF

OMEGA CONTRACTOR, INC.
Employer

on behalf of

SHAFIQUL HAQUE MUHD
Alien

Appearance: R. W. Foley, Esquire
For the Employer

BEFORE: Litt, Chief Judge; Vittone, Deputy Chief Judge; and
Brenner, Guill, Tureck, and Williams
Administrative Law Judges

LAWRENCE BRENNER
Administrative Law Judge

ORDER OF REMAND

We hereby grant the Certifying Officer's (C.O.) unopposed motion, dated March 14, 1989, to remand this case to the C.O. for the purpose of reconsidering his decision in light of Ashbrook-Simon-Hartley v. McLaughlin, 863 F.2d 410 (5th Cir. 1989). This case arises in the Fifth Circuit.

As correctly noted by the C.O., the Employer rejected U.S. applicants who met the minimum job requirements stated by the Employer and approved by the C.O., because they did not also have experience performing the specific job duties listed in block 13 of the application form 750A. Consistent with the Fifth Circuit's own remand in Ashbrook, the C.O. must reconsider experience in the job duties as part of the job requirements, and determine whether they are unduly restrictive for the job, and whether they are requirements which either the Alien did not possess when hired for the job or which can be acquired by a new employee within a reasonable period of on-the-job training. Ashbrook, supra at 416-17.

The C.O. in his motion in this case concludes with a general request that this Board remand Fifth Circuit cases pursuant to Ashbrook, "where U.S. applicants have been rejected based on deficiencies relating to job duties". The scope of this request is both too broad (e.g., it

fails to distinguish cases where experience in the job offered was a requirement), and too general. It behooves the C.O. to file a motion in any individual case in which it seeks such a result, giving the other parties an opportunity to respond in the context of the specific case.

ORDER

The decision of the C.O. denying alien labor certification is VACATED, and this case is remanded to the C.O. for actions consistent with this Order.

For the Board:

LAWRENCE BRENNER
Administrative Law Judge

LB/gaf